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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,455	03/27/2004	Jacob N. Gust	13911	9335

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CNH AMERICA LLC
 INTELLECTUAL PROPERTY LAW DEPARTMENT
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EXAMINER

NEWVILLE, TONI E

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,455

Applicant(s)

GUST ET AL.

Examiner

Toni Newville

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no reference in the specification to the phrases "generally adjacent" (claim 1), "generally continuous line" (claims 1 and 4), and "closely adjacent" (claims 4 and 6).

Response to Arguments

2. Applicant's arguments with respect to claims 1 and 3-10 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlessner et. al., US 20030217537, in view of Houck, US 5715893, cited in previous office action.

Schlesser discloses:

- A wheel-supported main frame (14) with first and second opposing lateral sides (Fig. 2) and adapted to be removably affixed to a tractor for movement along the ground in a direction of travel (page 2 paragraph 32 lines 1-6);
- First and second elongated wings (16A, 16B) each with an inner end and an opposing outer end and each having a longitudinal axis generally perpendicular to the direction of travel and a center point along the longitudinal axis generally equidistant from the respective inner and outer ends (Fig. 1);
- A first elongated support arm (18A) pivotally affixed at one end to the first lateral side of the main frame and at the other end to the center point of the first wing (16A) (paragraph 38 lines 3-5);
- A second elongated support arm (18B) pivotally affixed at one end to the second lateral side of the main frame and at the other end to the center point of the second wing (paragraph 38 lines 3-5);
- First and second hydraulic cylinders (52) interconnecting the first wing (16A) and the main frame (14), and second wing (16B) and main frame (14), respectively, such that activation of the cylinders can raise the wings (16A, 16B), in unison if desired, to a transport position and lower the wings (16A, 16B) to a working position in contact with the ground (paragraph 40 lines 6-10);

- The respective inner ends of said wings (16A, 16B) being closely adjacent to each other when in the working position, forming a generally continuous line across the width of said device (Fig. 1); and
- Both the first and second hydraulic cylinders (52) controlled by a hydraulic control system (paragraph 34 lines 8-9) and capable of being locked in place to hold the respective cylinders (52) in the working position whereby when in the working position, the wings float relative to the ground (paragraph 40 lines 6-10).

Schlesser fails to disclose a plurality of seeders affixed to the first and second wings (16A, 16B), and generally regularly spaced along the longitudinal axis thereof.

Like Schlesser, Houck discloses a soil working device for attachment to a tractor, including first and second wings (Houck; 40, 41) containing tooling that are raised and lowered by hydraulic cylinders (Houck; 158, 159). Unlike Schlesser, Houck discloses that the tooling of the soil working device could comprise seeders (column 6 line 65 – column 7 line 2), which could inherently be placed at regular spacing along the longitudinal axis of the wings (Houck; 40, 41).

Given the suggestion in Houck, it would have been obvious to one of ordinary skill in the art to include seeders on the wings (Schlesser; 16A, 16B) of Schlesser because seeding is a common procedure in the agricultural arts, and

all types of soil working tools are generally mounted on tractor-mounted implements of similar design.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni Newville whose telephone number is (571) 272 - 1548. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Toni Newville
August 31, 2005


THOMAS B. WILL
Supervisory Patent Examiner
Group 3600